



# STATE OF INDIANA

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December 14, 2008

Michelle Carson  
235 East Main Street  
Peru, Indiana 46970

*Re: Formal Complaint 08-FC-238; Alleged Violation of the Access to Public Records Act by the Area Five Agency on Aging & Community Services, Inc.*

Dear Ms. Carson:

This advisory opinion is in response to your formal complaint alleging the Area Five Agency on Aging & Community Services, Inc. ("AGENCY") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to public records. A copy of the Agency's response to your complaint is enclosed for your reference. It is my opinion the Agency is a public agency as defined by the APRA and as such is required to provide you access to the requested public records unless an exception to disclosure applies to the records.

## BACKGROUND

You allege that on October 15, 2008 you requested from the Agency copies of all minutes of the Board of Directors' meetings for the past year. You allege the request was ignored. You further allege that you again made the request on October 24, and you directed the request to Dan Casserly, Chief Operating Officer. You received an electronic mail message from Mr. Casserly on October 31. Mr. Casserly acknowledged the request and indicated the Agency was in the process of determining what, if any, obligation the Agency has under the APRA. On November 12 you received an electronic mail message from Mr. Casserly; in it he contended the Agency is not a public agency as defined by the APRA and as such would not provide you copies of the records. You contend the Agency is subject to audit by the state board of accounts and as such is a public agency under the APRA. You filed this complaint on November 14.

The Agency responded to the complaint by letter dated November 20 from attorney Cathleen Nevin. The Agency contends it is not, as far as it knows, subject to audit by the state board of accounts. The Agency contends any audit or budget review to which it is subject is pursuant to agreement rather than compelled by a statute, rule, or regulation. The Agency has declined to produce the records you have requested.

## ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The question here is whether the Agency is a public agency for the purposes of the APRA. Because the Agency is a not-for-profit Indiana corporation, the focus of the analysis is I.C. § 5-14-3-2(m)(3)(B):

“Public agency,” except as provided in section 2.1 of this chapter, means the following: . . .

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

I.C. § 5-14-3-2(m).

While it may generally be the case that not-for-profit corporations are not considered public agencies, the APRA defines as a public agency any entity that is subject to audit by the state board of accounts (“SBOA”).

To provide background, if less than fifty percent or more than fifty percent but less than \$100,000 of an entity’s disbursements are derived from public funds, an SBOA audit is limited to matters relevant to the use of public monies. I.C. § 5-11-1-9. If more than \$100,000 of the entity’s disbursements are derived from public funds, the entire entity is subject to audit by the SBOA. The SBOA does not always personally audit such entities, but the SBOA contracts with a certified public accountant to perform the audit.

The Agency contends it is not subject to audit by the SBOA and that any audit to which it has subjected itself is by agreement rather than by statute, rule, or regulation. I contacted the SBOA on this matter to determine whether Agency is subject to an SBOA audit. Tammy Baker of the SBOA provided the following response to my inquiry:

Area Five Agency on Aging & Community Services, Inc. is subject to audit by the SBOA. They have had audits completed by a CPA firm for many years. Area Five has submitted the reports to our department, as

required, and reports through 2006 have been filed. The 2007 report is in the review process.

As noted by Counselor Hurst in *Opinion of the Public Access Counselor 04-FC-03*, the determination whether an entity is subject to an audit by the SBOA is not mine to make. But the APRA is clear that when an entity is subject to an audit by the SBOA, it is a public agency, even if its makeup or actions do not otherwise conform to the definition of public agency in the APRA. Based on the communication I have received from the SBOA indicating the Agency is subject to audit, it is my opinion the Agency is a public agency for the purposes of the APRA, and as such it is required to provide access to its public records pursuant to the APRA unless an exception to disclosure applies.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Agency is a public agency as defined by the APRA and as such is required to provide you access to the requested public records unless an exception to disclosure applies to the records.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Cathleen Nevin, Katz & Korin PC  
Dan Casserly, Area Five Agency on Aging & Community Services, Inc.